

# **EXHIBIT 50**

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF CONNECTICUT

3 UNITED STATES OF AMERICA, )  
4 Plaintiff, )

NO: 3:06CR137(CFD)

5 vs. )

April 30, 2009

6 ROBERT D. GRAHAM, )  
7 Defendants. )

8 450 Main Street  
9 Hartford, Connecticut

10 SENTENCING

11 B E F O R E:

THE HONORABLE CHRISTOPHER F. DRONEY, U.S.D.J.

12  
13 A P P E A R A N C E S:

14 For the Plaintiffs : ERIC J. GLOVER, AUSA  
15 U.S. Attorney's Office  
16 157 Church Street, 23rd Floor  
New Haven, CT 06510

17 RAYMOND E. PATRICCO, AUSA  
18 U.S. Attorney's Office  
2100 Jamieson Avenue  
19 Alexandria, VA 22314

20 Court Reporter : Martha C. Marshall, RMR, CRR

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24  
25 Proceedings recorded by mechanical stenography, transcript  
produced by computer.

A P P E A R A N C E S:  
(Continued)

For the Defendant, :  
Robert D. Graham

ALAN M. VINEGRAD, ESQUIRE  
DOUGLAS BLOOM, ESQUIRE  
PAM CARTER, ESQUIRE  
Covington & Burling  
1330 Avenue of the Americas  
New York, NY 10019

WILLIAM F. DOW, III, ESQUIRE  
Jacobs, Grudberg, Belt, Dow &  
Katz, P.C.  
350 Orange Street  
New Haven, CT 06503.

1 THE COURT: Good morning. This is the case of the  
2 United States of America versus Robert Graham. It's our  
3 criminal number 3:06CR137.

4 If I could have the appearances of counsel for the  
5 record, please.

6 MR. PATRICCO: Good morning, your Honor. Ray  
7 Patricco and Eric Glover on behalf of the United States.

8 MR. VINEGRAD: Good morning, your Honor. Alan  
9 Vinegrad on behalf of Rob Graham. With me is Doug Bloom,  
10 Willie Dow, and Pam Carter.

11 THE COURT: Thank you.

12 The record should also reflect that Senior United  
13 States Probation Officer Brian Topor is present with us in  
14 the courtroom.

15 On February 25, 2008, Mr. Graham was convicted by  
16 a jury on Counts One through Sixteen of the Superseding  
17 Indictment which charged him with conspiracy, securities  
18 fraud, false statements to the SEC, and mail fraud.

19 A Presentence Report was prepared for the court by  
20 the United States Probation Office. And I have reviewed  
21 that report dated June 12th, 2008, and its addenda of August  
22 7th, 2008 and November 10th, 2008 in consultation with their  
23 principal author, Senior United States Probation Officer Ray  
24 Lopez as well as Mr. Topor.

25 Additionally, I've reviewed the defendant's

1 sentencing memos dated September 5, 2008 and November 25 --  
2 I'm sorry, November 21, 2008, as well as the Government's  
3 memos of September 5, 2008 and September 19, 2008. I've  
4 also reviewed the letters of July 22, 2008 and August 4th,  
5 2008 from Attorney Vinegrad, and we'll deal with the  
6 objections to particular paragraphs of the Presentence  
7 Report later that are set forth in those letters.

8 I have reviewed the materials submitted by the  
9 parties concerning loss calculation, number of victims, and  
10 restitution and issued my opinion on those matters  
11 previously.

12 I've also reviewed the many letters submitted  
13 concerning the sentencing of Mr. Graham. The defendant has  
14 objected to certain aspects of the Presentence Report and is  
15 seeking a role adjustment, a downward departure, and a  
16 non-guidelines sentence, as we'll discuss more fully later  
17 in this sentencing.

18 Mr. Vinegrad, is what I've just summarized an  
19 accurate assessment of the current state of the record with  
20 respect to this sentencing?

21 MR. VINEGRAD: Yes, your Honor.

22 THE COURT: Have you reviewed the PSR in this  
23 case?

24 MR. VINEGRAD: Yes, I have.

25 THE COURT: Do you have any additional objections



1 to it?

2 MR. VINEGRAD: No, I do not.

3 THE COURT: Mr. Graham, have you reviewed the  
4 Presentence Report in your case?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you gone over it with  
7 Mr. Vinegrad?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Patricco, you're going to be  
10 speaking for the Government today, is that right?

11 MR. PATRICCO: Yes, your Honor.

12 THE COURT: Do you have any additional objections  
13 to the Presentence Report?

14 MR. PATRICCO: No, your Honor.

15 THE COURT: Let me start with a list of topics and  
16 we'll see if you have any others before we hear your general  
17 sentencing comments.

18 First, is there any additional comments on the  
19 issue of loss calculation, number of victims, and  
20 restitution other than an argument for a downward departure  
21 or a non-guideline sentence? Does the Government want to  
22 add anything?

23 MR. PATRICCO: No, your Honor.

24 THE COURT: How about you, Mr. Vinegrad?

25 MR VINEGRAD: No, your Honor.

1 THE COURT: Then I'll incorporate my opinion of  
2 October 31, 2008 as rulings on those issues today. And in  
3 accordance with that ruling, 30 levels will be added for the  
4 Court's finding on amount of loss, and 6 levels will be  
5 added for the Court's finding of more than 250 victims.

6 And I know you preserve your objections to that,  
7 Mr. Vinegrad.

8 MR. VINEGRAD: Thank you.

9 THE COURT: The second is the defendant objected  
10 to the Presentence Report's application of the abuse of a  
11 position of trust enhancement pursuant to United States  
12 Sentencing Guidelines Section 3B1.3. And it appears that  
13 the Government agrees that an enhancement should not apply  
14 for abuse of position of trust, but it argues that an  
15 enhancement should apply under that section for use of  
16 special skill. Is that fair to say?

17 MR. PATRICCO: That's correct, your Honor.

18 THE COURT: And do you object to that, Mr.  
19 Vinegrad?

20 MR. VINEGRAD: We did not take issue with that.  
21 Instead, we argued that if that enhancement were applied it  
22 would further support our motion for a downward departure on  
23 the ground that the offense level overstates the  
24 seriousness of the offense.

25 THE COURT: Thank you.

1           The next is the defendant argues that he should  
2           receive a four-level reduction for a minimal role pursuant  
3           to 3B1.2(a). And the Government objects to that, disagrees  
4           with it. And I'll address that issue later in the  
5           sentencing and give a chance to comment on it, Mr. Vinegrad  
6           and Mr. Patricco.

7           The defendant previously objected to the PSR's  
8           finding that the Mandatory -- this was the finding of the  
9           PSR -- that the Mandatory Victims Restitution Act, 18 U.S.  
10          Code Section 3663A, is applicable in this cases. As  
11          explained in my October 31, 2008 ruling, because the Court  
12          finds that an order of restitution is inappropriate under 18  
13          U.S. Code Section 3663A(c)(3), it is unnecessary to address  
14          the defendant's objection that the offenses charged are not  
15          encompassed by the MVRA.

16          Next, in your letter of July 22, 2008, Mr.  
17          Vinegrad, you had certain objections to certain inaccuracies  
18          in the Presentence Report, but I think those have all been  
19          corrected. Are you satisfied with that?

20                 MR. VINEGRAD: Yes, I am.

21                 THE COURT: And then the Government objected to  
22          the PSR's finding that the loss cannot be reasonably  
23          determined but I, in my opinion of October 31, 2008, ruled  
24          on it, that issue.

25                 You're satisfied with that resolution, is that



1 right, Mr. Patricco?

2 MR. PATRICCO: Yes, we are, your Honor.

3 THE COURT: Let's see. There should be certain  
4 statutory -- corrections to the statutory penalties for some  
5 of the counts in the PSR, especially securities fraud and  
6 false statements to the SEC or, namely, those two areas. On  
7 July 30, 2002, 15 U.S. Code Section 77ff was amended to  
8 increase the maximum penalty from 10 years imprisonment and  
9 a one million dollar fine to 20 years imprisonment and a  
10 five million dollar fine. Counts Two, Three, Four, Five,  
11 Six, Seven, Eight, and Eleven were charged for conduct on  
12 dates prior to July 30th, 2002, and therefore the maximum  
13 penalties on each of those counts are 10 years imprisonment  
14 and a one million dollar fine. Counts Nine, Ten, Twelve,  
15 and Thirteen were charged for conduct on dates after July  
16 30th, 2002, and therefore the maximum penalties on each of  
17 those counts are 20 years imprisonment and a five million  
18 dollar fine.

19 And additionally, I think that pursuant to the  
20 United States Sentencing Guidelines Section 5E1.2(c)(3)-(4),  
21 the PSR should reflect that the correct guideline fine range  
22 is \$25,000 to 5 million dollars.

23 Do you agree with all that, Mr. Vinegrad?

24 MR. VINEGRAD: Yes, I do.

25 THE COURT: And you, too, Mr. Patricco?

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1 adjustment "is intended to cover defendants who are plainly  
2 among the least culpable of those involved in the conduct of  
3 a group. The defendant's lack of knowledge or understanding  
4 of the scope and structure of the enterprise and of the  
5 activities of others is indicative of a role as minimal  
6 participant." The Application Note also explains that the  
7 Commission "intended that the downward adjustment for a  
8 minimal participant will be used infrequently." And that's  
9 from Application Note 4.

10 Additionally, United States Sentencing Guidelines  
11 Section 3B1.2(b) provides for a two level downward  
12 adjustment "if the defendant was a minor participant in any  
13 criminal activity." In United States v. Lopez, the Second  
14 Circuit explained that the minor participant adjustment  
15 "applies to a defendant who is less culpable than most other  
16 participants, but whose role could not be described as  
17 minimal."

18 A reduction is not available under Section 3B1.2  
19 "simply because the defendant played a lesser role than his  
20 co-conspirators; to be eligible for a reduction, the  
21 defendant's conduct must be minor or minimal as compared to  
22 the average participant in such a crime." And that's a  
23 quote from the Rahman case from the Second Circuit, 189 F.3d  
24 88, page 159, a per curiam decision in 1999. Further,  
25 "under United States Sentencing Guidelines Section 3B1.2,



1 the District Court is required to gauge the appellant's  
2 culpability relative to the elements of the offense of  
3 conviction as well as in relation to the co-conspirators."  
4 And that's a quote from the Neils decision from the Second  
5 Circuit in 1998. In evaluating a defendant's role, we look  
6 to factors such as "the nature of the defendant's  
7 relationship to other participants, the importance of the  
8 defendant's actions to the success of the venture, and the  
9 defendant's awareness of the nature and scope of the  
10 criminal enterprise." That's a quote from the Garcia  
11 decision from the Second Circuit in 1990.

12 Having considered the factors identified in the  
13 guidelines and the case law, I find that Mr. Graham's role  
14 in the offense does not warrant a downward adjustment under  
15 3B1.2.

16 Mr. Graham was involved in this transaction from  
17 November 2000 through at least May 2001, and was important  
18 to its success. Specifically, he prepared the contract that  
19 completed the paper trail of the LPT fraud, and he reviewed  
20 and offered advice to his co-conspirators about the contents  
21 of the fake offer letter.

22 Mr. Graham also knew about and understood the  
23 scope and structure of the LPT fraud. Although Mr. Graham  
24 argues that no one told him the underlying contracts were  
25 already reinsured, his knowledge of the fraudulent nature of



1 the LPT can be inferred from other evidence. First, Mr.  
2 Graham participated in the November 20, 2000 meeting with  
3 Monrad, Garand, Napier, and Milton in which Monrad told  
4 Milton that Gen Re would deposit account for the  
5 transaction. Following that meeting, Mr. Graham sent an  
6 e-mail to Napier, Garand, and Monrad in which he explained  
7 the benefit of using a non-U.S. entity so that reviewers  
8 would not be able to "connect the dots to CRD and beyond."  
9 Mr. Graham also revealed his knowledge of the true nature of  
10 the deal when he expressed his concern about it to  
11 Mr. Napier following the November 20th meeting. Next, on  
12 December 22, 2000, Mr. Graham updated Gen Re's General  
13 Counsel, Timothy McCaffrey, about the transaction, telling  
14 him that "our group will book the transaction as a deposit,  
15 but how AIG books it is between them, their accountants, and  
16 God; there is no undertaking by them to have the transaction  
17 reviewed by their regulators." Finally, in a March 7, 2001  
18 phone call, Mr. Graham discussed how AIG's approach to  
19 compliance issues was different than Gen Re's, and said that  
20 he was "pretty comfortable that our own skirts are clean,  
21 but that they have issues."

22 Because the Court finds that Mr. Graham was aware  
23 of the nature and scope of the LPT and played a significant  
24 role in its success, he is not substantially less culpable  
25 than the average participant, and will not receive a

1 mitigating role adjustment.

2 And so I've completed my finding on that issue.  
3 I've dealt with the use of special skill and will apply  
4 that. And I'll make the following finding about that.

5 That adjustment under 3B1.3 applies when a  
6 defendant used a special skill in a manner that  
7 significantly facilitated the commission or concealment of  
8 the offense. Application Note 4 defines special skill to be  
9 "a skill not possessed by members of the general public and  
10 usually requiring substantial education, training or  
11 licensing," and specifically includes lawyers as an example  
12 of those possessing special skill. Here, Mr. Graham's  
13 special skill as a lawyer significantly facilitated the  
14 commission and concealment of the LPT fraud. Mr. Graham  
15 used his skill and experience to draft the contract and  
16 review and suggest edits to the fake offer letter, and to  
17 otherwise provide legal counsel on the transaction.

18 Why don't we turn to downward departures at this  
19 time, Mr. Vinegrad. I'm going to list what I understand to  
20 be your bases for a downward departure and I'm going to ask  
21 you whether you agree with me.

22 The first is the offense level substantially  
23 overstates the seriousness of the offense under 2B1.1 of the  
24 Guidelines, Application Note 19(C);

25 The second is the cumulative effect of

1 substantially overlapping enhancements results in a  
2 significant increase in the sentencing range minimum not  
3 adequately considered by the Sentencing Commission;

4 The third is Mr. Graham's conduct represented  
5 aberrant behavior;

6 The fourth, Mr. Graham was not motivated by  
7 personal gain;

8 Fifth, Mr. Graham's extraordinary civic and  
9 charitable works;

10 Sixth would be the unique and significant  
11 collateral consequences that Mr. Graham has faced and will  
12 face from his prosecution and conviction;

13 Seventh is a combination of those factors under  
14 the Rioux case from the Second Circuit and the Koon case  
15 from the United States Supreme Court; and

16 Lastly, the Sixth Amendment to the U.S.  
17 Constitution would require a jury determination as to the  
18 amount of loss and number of victims.

19 And the Government objects to those, Mr. Patricco,  
20 right?

21 MR. PATRICCO: Correct, your Honor.

22 THE COURT: Is that a fair statement of your  
23 arguments?

24 MR. VINEGRAD: Yes, your Honor.

25 THE COURT: And you're seeking a non-guidelines



1 sentence also based on those reasons, but also the  
2 application of the other factors under 18 U.S. Code Section  
3 3553(a), right?

4 MR. VINEGRAD: Yes, your Honor.

5 THE COURT: And the Government objects to it.

6 Does the Government object to a non-guidelines  
7 sentence or the extent of the non-guidelines sentence, Mr.  
8 Patricco?

9 MR. PATRICCO: To the extent of the non-guidelines  
10 sentence.

11 THE COURT: The Court adopts the factual  
12 statements in the PSR as to which there are no objections.  
13 I direct the Official Court Reporter to make a written  
14 record of the colloquy today on these matters. I Also  
15 direct the Clerk and the U.S. Probation Office to append a  
16 copy of this written record to any copy of the Presentence  
17 Report that is hereafter made available to the U.S. Bureau  
18 of Prisons.

19 Next, what I'd like to do is to state what I  
20 believe the Sentencing Guidelines calculations are following  
21 my decisions on those issues.

22 The adjusted offense level would be 47;

23 Criminal History Category for Mr. Graham is I;

24 The imprisonment range is life under the  
25 guidelines;



1 Supervised release range is two to three years;  
2 Probation would not be available, absent a  
3 downward departure or a non-guidelines sentence;

4 A fine of \$25,000 to 5 million dollars is called  
5 for.

6 And lastly, the special assessment of \$1600.

7 Do you agree with those, Mr. Topor?

8 MR. TOPOR: I do, your Honor.

9 THE COURT: Mr. Patricco, you too?

10 MR. PATRICCO: Yes, your Honor.

11 THE COURT: Mr. Vinegrad, I know that you object  
12 to the guidelines, but do you agree to the math at least  
13 that I've gone through?

14 MR. VINEGRAD: Yes, I do.

15 THE COURT: Would the Government care to address  
16 the court about an appropriate sentence in this case?

17 MR. PATRICCO: Yes, your Honor.

18 Your Honor, to put Mr. Graham's crime into its  
19 proper perspective, you must begin with his personal history  
20 and characteristics.

21 Mr. Graham was a lawyer -- is a lawyer who twice,  
22 in both Connecticut and Delaware, took a solemn oath to  
23 uphold the law in all circumstances. He's a former criminal  
24 public defender in Delaware. At Gen Re he was the company's  
25 expert on reinsurance regulations and accounting rules.

1           Indeed, he was an industry industry expert. Back in 2004,  
2           he testified under oath in a lawsuit involving Gen Re that  
3           "I've served as the principal draftsman of most of the  
4           reinsurance related model laws and regulations and  
5           accounting rules since 1986."

6           In addition, when Gen Re was a public company, Mr.  
7           Graham was responsible for preparing its 10-K reports and  
8           its other financial filings with the SEC. And perhaps most  
9           importantly for purposes here, back in 1997, he gave a legal  
10          opinion in an e-mail on the very issue that is at the heart  
11          of this case. In an e-mail entitled "Side Letters" he  
12          advised Chris Garand and others in no uncertain terms that  
13          they should put oral side understandings in writing and  
14          state explicitly to auditors and regulators that these are  
15          non-enforceable or else you might have "fraud and RICO  
16          problems" and "go to jail." He explained that this is  
17          because oral side understandings might "eliminate the  
18          reasonable possibility of significant risk of loss to the  
19          reinsurer which is one of the conditions to reinsurance  
20          accounting under both GAAP and SAP."

21          It's no over-statement to say that no one involved  
22          in the LPT was more sensitized to what was at stake and what  
23          the potential repercussions were than Mr. Graham. So in  
24          November of 2000, when he was presented with the prospect of  
25          this deal, there should have been no equivocation. There

1           should have been no gray areas. Rob Graham should have been  
2           as blunt with his bosses on this deal as he apparently was  
3           with them on others. He should have told them, no, this is  
4           wrong, I'm not getting involved, and neither should you.  
5           Because that is the duty of in-house corporate counsel, to  
6           protect business people from themselves. And the facts in  
7           this case have made clear he completely failed in that duty.

8                     Now, what is also clear as to Mr. Graham is that  
9           he didn't just put his head in the sand in this case and  
10          fail to act, he became an active participant in the LPT  
11          deal.

12                    First, as the court noted just before, he applied  
13          his vast knowledge of reinsurance and accounting  
14          regulations, and advised his co-conspirators to structure  
15          the LPT in a way that might conceal it from auditors and  
16          regulators.

17                    Secondly, he drafted and edited the fraudulent  
18          documents in this case that, in case regulators and auditors  
19          did ever look at this transaction, they would be misled as  
20          to its true nature.

21                    The court recalls, and I'll be brief on this,  
22          Government's Exhibit 43, Mr. Graham's e-mail to Ms. Monrad,  
23          Mr. Garand, and Mr. Napier after the November 20th  
24          conference call wherein he suggested that AIG use an  
25          offshore entity as the contracting party for the deal



1 because "the benefit of this approach would be that since  
2 the AIG U.S. entities would report the AIG non-U.S. entity  
3 as cedants on Schedules F and P, any review of AIG U.S.  
4 entity statements wouldn't be able to connect the dots to  
5 CRD and beyond."

6 The court also recalls Government's Exhibit 57  
7 which is an e-mail from Rick Napier to Rob Graham and  
8 others. That e-mail forwarded the November 17th e-mail that  
9 contained the secret side deal in this case about the one  
10 percent fee and the two percent rebate, along with the draft  
11 slip that made actually no mention of them. Mr. Graham's  
12 response was not to question this fee rebate and omission  
13 from the slip contract, but only to advise that "since the  
14 fee rebate will be coming from the CCA Commission, we should  
15 be careful with inter-company transfers. If they are  
16 reportable under the Holding Company Act, a curious outside  
17 party could deduce that there is a link between the  
18 transactions."

19 He also, your Honor, went so far later in the  
20 conspiracy, as your Honor noted, to advise John Houldsworth  
21 point blank on tape, on Government's Exhibit 137, that AIG's  
22 "organizational approach to compliance issues has always  
23 been pay the speeding ticket which is different from our  
24 organizational approach. So I'm pretty comfortable that our  
25 own skirts are clean, but that they, AIG, have issues."



1           Together, your Honor, Rob Graham's advice had the  
2 effect of galvanizing this conspiracy. That's because when  
3 a lawyer advises you how to conceal a transaction, it gives  
4 you comfort that you won't get caught. And even if you do  
5 get caught, you know that his involvement in the transaction  
6 will provide you with some cover, especially when he tells  
7 you that it's the other company's problem, not yours. So  
8 even as Mr. Graham claims that his overall participation in  
9 the LPT deal took only a few hours of his time, those were  
10 some of the most crucial hours of this conspiracy, given who  
11 Rob Graham was, what he represented to the other  
12 co-conspirators in this case, and what he said and did.

13           Now, in his papers, your Honor, Mr. Graham claims  
14 that he tried to do the right thing by raising his concerns  
15 about the LPT in an e-mail to his boss, Tim McCaffrey. But  
16 any objective reading of Government's Exhibit Number 84  
17 reveals a much less noble purpose.

18           As the court recalls, Mr. Graham wrote: Our group  
19 will book the transaction as a deposit. How AIG books it is  
20 between them, their accountants, and God. Ron, et al have  
21 been advised of and have accepted the potential reputational  
22 risk that U.S. regulators, insurance and securities, may  
23 attack the transaction and our part in it.

24           No where in this e-mail does Mr. Graham say that  
25 he's concerned about the transaction. No where does he say

1 he's uncomfortable. And nowhere does he suggest that  
2 Mr. McCaffrey talked to Mr. Ferguson about the wisdom of  
3 going forward with this transaction. This e-mail, in an  
4 objective reading, is nothing more than someone seeking  
5 cover from their boss by copying them on an e-mail they  
6 received. The simple message to Mr. McCaffrey is that the  
7 ship has sailed on this transaction and that he shouldn't  
8 interfere with it. So far from trying to do the right thing  
9 in this case, the e-mail assured that this deal would go  
10 forward unimpeded by the general counsel of Gen Re.

11 And what's truly perplexing about Mr. Graham's  
12 statement that he tried to do the right thing is that over  
13 the years since the LPT, he had many opportunities to have a  
14 crisis of conscience about the deal and to do something  
15 about it. In the wake of the PNC and AIG, Brightpoint cases  
16 and the Enron cases, he was repeatedly warned point blank  
17 about the dangers of improper documentation and side  
18 agreements and aiding and abetting unscrupulous clients.  
19 But every time he had the chance to do the right thing and  
20 raise his voice about the LPT deal and try to reverse it, he  
21 apparently did nothing and remained silent. I'll point to a  
22 couple of e-mails and notes taht he received through the  
23 years, your Honor, very briefly.

24 In March of 2002, Mr. McCaffrey sent him an e-mail  
25 entitled "Finite Risk Contracts" that summarized a

1 conversation in an executive committee meeting that  
2 Mr. Brandon had with Mr. McCaffrey and others. In that Mr.  
3 McCaffrey and Mr. Brandon also says that all provisions and  
4 understandings of financial reinsurance contracts need to be  
5 recorded and contained in a single document. No side  
6 letters, no use of multiple contracts.

7 Later in 2002, in July, Mr. Brandon sent an e-mail  
8 entitled "SEC Findings on PNC/AIG Transactions," where he  
9 wrote to Mr. Graham and others: Below is the SEC findings  
10 on PNC financial transactions with AIG that were designed to  
11 remove non-performing assets from PNC's balance sheet and  
12 income statement. Lots of parallels to some financial  
13 reinsurance transactions. Avoiding reputational risk in all  
14 of our transactions, traditional or non-traditional, is  
15 paramount.

16 In 2003, in the summer, Mr. Brandon attached a  
17 note from Warren Buffett and a New York Times editorial  
18 regarding Citigroup and J.P. Morgan aiding and abetting  
19 Enron in committing a fraud. In that note, Mr. Brandon  
20 warned, "simply put, we cannot enter into any transaction  
21 that helps a client deceive, mislead investors or  
22 regulators. If anyone has a question about a particular  
23 transaction, please discuss it with either Tad or me."

24 And two months later, the last one, your Honor, in  
25 October of '03, Mr. Brandon sent him another note from



1 Mr. Buffett and news about the PNC/Brightpoint/AIG  
2 settlement. He attached an article called "Son of Enron"  
3 that discussed companies cooking their books through finite  
4 insurance policies and attached an IBNR Weekly article that  
5 said: "The recent SEC settlement with AIG highlighted in a  
6 very public forum the practice of side letters written to  
7 supersede the formal reinsurance contract. In the AIG  
8 example, the agreements were meant to eliminate any risk  
9 transfer in the original agreement shown to auditors." And  
10 then on the cover note Mr. Brandon stated this is another  
11 reminder we cannot enter into any transaction that helps a  
12 client deceive or mislead investors or regulators.

13 Your Honor, despite all these red flags over the  
14 years from Mr. Brandon that other companies were engaging in  
15 being investigated into similar conduct as the LPT, Rob  
16 Graham apparently did nothing to suggest reversing this deal  
17 to his bosses or to anyone else. Now, of course, we  
18 recognize that it would have taken some courage for him to  
19 do this especially since the evidence in this case showed  
20 that Mr. Brandon and Mr. McCaffrey were involved in the LPT,  
21 but that is what is expected of in-house corporate counsel.  
22 That was his job and apparently he did not do it. Simply  
23 put, your Honor, Mr. Graham had many chances to take  
24 responsibility for this crime before he got caught and he  
25 failed in those chances. So in light of those missed



1 opportunities, any expressions of responsibility or remorse  
2 here today by Mr. Graham should be met with some skepticism.  
3 Especially since, as your Honor noted, Mr. Graham was  
4 drafting contracts well through -- into the year 2001.

5 Mr. Graham also seeks leniency in his papers  
6 because he claims unique collateral consequences as a result  
7 of him being a lawyer. Specifically, he claims to lose his  
8 law license and will be unable to pursue a post Gen Re  
9 career as a reinsurance arbitrator. Even putting aside the  
10 fact that the loss of his law license as a result of his  
11 conviction in Connecticut is by no means a sure thing, and I  
12 presume his arbitration practice would be based here in  
13 Connecticut, his argument should carry little weight with  
14 the court for another reason. That's because Rob Graham  
15 voluntarily allowed his Connecticut law license to lapse  
16 even before this trial began. According to the Connecticut  
17 Bar's website, on May 22, 2007, seven months before this  
18 trial began and well before any finding of guilt, Mr.  
19 Graham's bar license was administratively suspended by the  
20 Bar due to his failure to pay the mandatory client security  
21 fund fee, which this court well knows is a fund set up by  
22 the bar to reimburse innocent clients with their attorneys  
23 steal from them. In addition, according to the website,  
24 your Honor, he's not provided a new forwarding address to  
25 the Bar since he's left Gen Re. I say this because I find

1           it curious that Mr. Graham would now claim that his law  
2           license is so important to him and that he'll suffer  
3           disproportionate punishment as a result of potentially  
4           losing it. And even if he does eventually lose his bar  
5           license and his ability to practice law, as your Honor  
6           knows, the Second Circuit in Cutler held that this is a  
7           consequence that every lawyer who engaged in fraud --  
8           engages in fraud should expect.

9           In conclusion, your Honor, I'd like to just  
10          briefly address general deterrence. As I've said in other  
11          sentencing hearings in this case, in enacting Section 3553,  
12          Congress was very much concerned with deterrence of  
13          white-collar criminals. As a subset of white-collar  
14          criminals, deterring lawyers from crime is particularly  
15          important. That's because, as I alluded to earlier, lawyers  
16          who participate in white-collar crimes legitimize the crimes  
17          in the minds of other would be white-collar criminals and  
18          can galvanize a conspiracy in ways that most layman cannot.  
19          And if I could just quote from a 1964 Second Circuit case,  
20          United States v. Benjamin, another securities case involving  
21          a defendant lawyer, Judge Friendly wrote: "In our complex  
22          society, the accountant's certificate and the lawyer's  
23          opinion can be instruments for inflicting pecuniary loss  
24          more potent than the chisel or the crowbar."

25               As this Court is well aware and has found, Rob

1           Graham and his co-conspirators inflicted a tremendous  
2           pecuniary loss in this case, at least 544 million dollars to  
3           AIG shareholders. I would submit to your Honor that at some  
4           level Rob Graham always knew that this result was coming.  
5           That's why he wrote back in 2000 that securities regulators  
6           may attack this transaction and our part in it. But that  
7           revelation did not deter him from participating in the LPT  
8           transaction, nor did the fact that he was a regulatory --  
9           reinsurance accounting and regulator expert, nor did the  
10          fact that he once prepared financial statements for a  
11          publicly-traded company, nor did the fact that he once gave  
12          advice that you could go to jail for oral side  
13          understandings.

14                 I'd submit, your Honor, if an otherwise  
15          well-intentioned lawyer like Mr. Graham, armed with this  
16          knowledge and experience, cannot be deterred, the only way  
17          to deter other lawyers who are similarly situated and  
18          perhaps less scrupulous, is to send them a message with an  
19          appropriate prison sentence for Mr. Graham. In addition to  
20          deterrence, such a sentence would promote respect for the  
21          law and would be just punishment for what Mr. Graham did and  
22          what he failed to do.

23                 THE COURT: Thank you, Mr. Patricco.

24                 Do you know of any victims who care to address the  
25          Court today, Mr. Patricco?



1 MR. PATRICCO: I'm sorry.

2 THE COURT: Do you know of any victims?

3 MR. PATRICCO: I do not.

4 THE COURT: Thank you.

5 Mr. Vinegrad.

6 MR. VINEGRAD: This is a tragic day. A man with  
7 an impeccable reputation in his profession, 35 years, a man  
8 who has spent his entire adult life doing extraordinary  
9 things for other people in both his professional and  
10 personal life sits in a federal courtroom convicted of  
11 serious crimes with his professional future and livelihood  
12 destroyed because of his actions in this case. I think  
13 that's tragic.

14 And what I'd like to do, your Honor, this morning  
15 is talk to you for a few minutes about why the same  
16 discretion, the same leniency that your Honor has displayed  
17 in the prior sentencings in this case, and I'm referring  
18 specifically to the sentencings of the other so-called Gen  
19 Re defendants, because Mr. Graham is a member of that group,  
20 why Mr. Graham deserves that same measure of discretion of  
21 leniency and, in fact, for reasons that I'll explain why, I  
22 submit to you, he is deserving of the greatest degree  
23 leniency of anyone.

24 Now, your Honor, I am mindful of what your Honor  
25 has done and said at the prior four sentencings in this

1 case. And I think your Honor already has spelled out on the  
2 records of those proceedings the factors that support  
3 Mr. Graham deserving, at a minimum, an equal measure of  
4 leniency.

5 First, Mr. Graham did not gain anything directly  
6 or personally as a result of this transaction, nor was that  
7 his motive, nor was that his intent.

8 Secondly, he has lived a life of extraordinary  
9 works, both with respect to his civic service, his  
10 charitable service, his public service, as well as a  
11 multitude of acts of a more discrete, of a more personal  
12 nature throughout his lifetime, is well documented to the  
13 letters that have been submitted to this court.

14 Third, he has led an extraordinary professional  
15 life, an exemplary and, until this case, unblemished career,  
16 not just representing people diligently and faithfully as  
17 was his obligation as a lawyer, but in helping others, in  
18 teaching others, in mentoring others. And I'm not just  
19 talking about friends and I'm not just talking about  
20 colleagues. I'm talking about regulators, I'm talking about  
21 competitors, and even people that he had never met before in  
22 his life before he taught them and helped them and mentored  
23 them. And that's special.

24 Fourth, he is like the other defendants, a  
25 first-time offender who, I submit to the court, presents no

1 risk of recidivism.

2 And finally, and in this respect I think he is  
3 more comparable to Mr. Garand than he is to Mr. Ferguson or  
4 Ms. Monrad, was his level or his role, his place in the  
5 so-called corporate ladder.

6 As your Honor has already found during the  
7 sentencing, I believe, of Mr. Ferguson, your Honor described  
8 people who were involved in this case, and Mr. Graham I  
9 think fits squarely within this description, as underlings  
10 who were papering the deal, who were lower level people  
11 documenting the transaction at the direction, under the  
12 supervision, and at the behest of their superiors. So  
13 unlike Mr. Ferguson, the CEO, who initiated, oversaw,  
14 supervised, and directed the transaction virtually from  
15 beginning to end, and who had the ultimate decision to make  
16 about whether this transaction should proceed, unlike  
17 Ms. Monrad, the CFO who your Honor recently found had a  
18 managerial and supervisory role in this transaction, who  
19 supervised the activities of others, including Mr. Graham,  
20 not saying that what he did was not important, but I think  
21 it bears recognition, and the Second Circuit case law  
22 supports this, in discerning the relative levels of  
23 culpability that what he did was at the behest and at the  
24 direction of others. And under those principles, the Cavera  
25 case, for example, that talks about the wide variability in



1 culpability, even in significant fraud cases with large  
2 losses, that the court has the discretion to draw those  
3 distinctions. And I submit to you, if you look at the  
4 evidence in this case and you look at that so-called  
5 corporate ladder, Rob Graham, even as a lawyer, was at that  
6 lower level that your Honor identified earlier, doing what  
7 he did at the behest and at the direction of others.

8 But beyond that, Judge, I submit to your Honor, as  
9 I said earlier, that there are certain aspects of this case  
10 that are unique to Rob Graham that make him deserving of  
11 even greater leniency than your Honor has demonstrated thus  
12 far in this case.

13 Why do I think that's so?

14 First, and I'll say it, and I believe it, and I  
15 believe it as much now as I did ten minutes ago, or as I did  
16 a year ago, and I'll believe it until the day that I die, he  
17 tried, in his own way, in his unsuccessful way, but he tried  
18 in good faith to do the right thing and to share his  
19 concerns and put a stop to this transaction. Some of their  
20 own evidence shows that.

21 I'm not here to argue Mr. Graham's guilt. That  
22 was last year. You can accept everything the Government  
23 says about what he did during the course of this  
24 transaction, but it remains undeniable, I submit, that he  
25 tried, he tried to put a stop to it. He raised his concerns

1 with Mr. Napier, and that was the word that Mr. Napier used  
2 on that witness stand, not the characterization that Mr.  
3 Patricco used a moment ago. He said Mr. Graham was  
4 concerned. He shared his concerns with Mr. Garand. He  
5 shared his concerns with Ms. Monrad. Your Honor may recall  
6 from that e-mail to Mr. McCaffrey that Mr. Graham wrote that  
7 Ron, et al had been advised of the risk of the transaction  
8 and what might happen. And during his interview with the  
9 Government back in 2005, and I don't think the Government  
10 takes issue with this, Mr. Graham explained that his  
11 reference to "et al" was Mr. Napier and Mr. Garand and  
12 Ms. Monrad. And he shared his concerns with Mr. McCaffrey.

13 Let me just pause on Mr. McCaffrey. He was the  
14 General Counsel. My client was not. He had ultimate  
15 responsibility within Gen Re for this transaction and  
16 whether it went forward. He was the man that the Government  
17 argued at trial was up to his eyeballs in criminality just  
18 like everybody else in the courtroom. The man who at the  
19 other end of that e-mail that the Government viewed as so  
20 essential to their case against everybody. Rob Graham  
21 shared his concerns with his boss. And I say concerns,  
22 Judge, and it was in good faith. And Mr. Patricco stood up  
23 here ten minutes ago and tried to give it a different  
24 characterization. So I'd like to take your Honor back to  
25 what was said at the trial.

1           What was said at the trial about that exhibit,  
2           about that e-mail was it was an exhibit which was about "Mr.  
3           Graham expressing his concern over the transaction." That's  
4           the words that were used by Mr. Patricco. And he may have  
5           done it in colorful language, invoking God and reputational  
6           risk and all the rest of it, but any fair reading of that  
7           document to any General Counsel reading it in his in-box  
8           would know that Rob Graham had serious and genuine concerns  
9           about this transaction and was raising them up the chain of  
10          command, just as he was supposed to. So far up the chain of  
11          command that as that e-mail reflects that Mr. Ferguson  
12          himself, the CEO, number one in the company, was aware of  
13          Mr. Graham's concerns. And he knew it. He went to the top.  
14          And he failed. No doubt about it, that's why we're here.  
15          And he took actions that formed the basis of the verdict  
16          against him. That's why we're here. But he tried. And now  
17          that we're here to talk about punishment and not guilt, that  
18          should matter Judge, that should matter for something. That  
19          he took concrete, identifiable, specific steps to go up the  
20          chain of command, five different executives, all the way to  
21          the top, including the Chief Legal Officer, to warn them. I  
22          think in your Honor determining what just punishment is in  
23          this case that factor has to be taken into account.

24                 Secondly, and I think this also makes Rob Graham  
25          unique amongst the five defendants in this case, is remorse.



At every single sentencing in this case before today, every one of the four of them, the Government has gotten up and made a strong point to your Honor about why serious terms of imprisonment are necessary because, among other things, the defendants showed absolutely no remorse, not a bit of remorse, not an ounce of remorse. The words changed but the point was clear. They didn't do that today. And I commend them for not doing that today. And there's a reason they didn't do that today. Is because he is different and he has shown remorse. And I'm not just talking about the concerns and the doubts that he had back in the day when this transaction was being put together. I'm talking about throughout the course of the investigation and trial that followed. Not just today. But way back then, the spring of 2005, when Mr. Graham went in and was interviewed by ten different government agents for two full days, being interviewed about this transaction, and it was candid and it was forthcoming, it was remorseful. It's hard to recreate it, Judge, but I was there. I was sitting by his side. And the remorse and the regret that this man felt was palpable. They can contradict me if they can. I don't think they can. Because there was genuine remorse before he was indicted. We've acknowledged it in writing. We've acknowledged how he failed. The Government had a very stinging statement in their brief about how he had failed his family and failed

1 his friends and failed his colleagues. And we came right  
2 back and agreed.

3 And throughout the course of this long case, over  
4 four years, throughout the entire time that I have  
5 represented this extraordinary and exceptional man, not  
6 once, not once, has he displayed anything, anything other  
7 than the absolute utmost respect for this Court and for the  
8 criminal justice process that brings him here today. There  
9 were no post-verdict interviews from lawyers denouncing the  
10 jury, denouncing the system. There was no post-verdict  
11 interview from Mr. Graham, on the record interviews blaming  
12 the jury, blaming the system, blaming his lawyers for his  
13 plight. There was no effort to transfer assets out of his  
14 name to avoid potential monetary obligations. There was  
15 none of that. None of that. And for anybody who knows Rob  
16 Graham, and for any of the 95 people who wrote on his  
17 behalf, the notion that he would do any of those things, or  
18 even think about it, is unfathomable. The letters, the  
19 people who described how extraordinarily out of character  
20 this episode is for Rob Graham when contrasted with the  
21 extraordinary works of his life, and the personal torment  
22 this he has put himself through, put himself through, for  
23 years, not just the last six weeks, but for years as a  
24 result of this case.

25 So, your Honor, I submit to you there is genuine

1 remorse. Long standing remorse. And just as the Government  
2 said at the prior sentencings that the lack of remorse  
3 should matter, I stand here before you today and argue that  
4 the existence of genuine remorse should matter for Mr.  
5 Graham.

6 And thirdly, are there collateral consequences.  
7 He is licensed in Delaware. He's authorized to practice law  
8 in Delaware. He's going to lose that license. And not only  
9 that license, he's going to lose his ability to practice or  
10 work in this industry. It's not just a matter about  
11 drafting contracts. I mean, let's be real. He's out. He's  
12 out of the only profession he's ever known. He's out of the  
13 only industry he's ever known. Any notion of working as an  
14 umpire or an arbitrator or whatever else was being planned  
15 is gone and it's gone forever. Unlike Mr. Ferguson who had  
16 retired long ago, unlike Mr. Garand who had retired long  
17 ago, unlike Ms. Monrad or Mr. Milton who continued to work  
18 during the course of this case, even after they were  
19 indicted, were gainfully employed during the course of these  
20 proceedings. So the collateral consequences to Mr. Graham  
21 are unique and they are devastating. He has not worked a  
22 day in three and a half years. At a profession, that I hope  
23 this came clear in the submissions to the court, a  
24 profession that was not just his job, it was his life. It  
25 was his persona. It was the essence of his being. And I'm



1 not just talking, just to be very clear, Judge, I'm not  
2 talking about the loss of income, although it is very  
3 substantial, and if you do the math it's a very substantial  
4 percentage of what his net worth is, but I'm not here making  
5 a plea of poverty. I'm talking about the loss of his  
6 identity. I'm talking about the inability to have the  
7 dignity and the self-worth to do good, hard work at what you  
8 know and what you are trained to do best. That's a loss  
9 that is painful. That is a loss that is immeasurable and, I  
10 submit, more significant to this man than the diminishing  
11 balance of his bank account.

12 And if you add that up, if you add all those  
13 considerations up, I submit to you there are many compelling  
14 reasons why Rob Graham is particularly deserving of your  
15 Honor's discretion and leniency. More so than anyone who  
16 has come before the Court in this case for sentencing. And  
17 that level of discretion, I submit, is born out and  
18 supported by what courts have done in other cases, other  
19 sentencings that are described in our brief, in our November  
20 21st brief, cases involving lawyers convicted of frauds,  
21 serious frauds, after trial, some of whom did not commit it  
22 for personal gain, some who did. Cases in which judges have  
23 seen fit in recognition of the extraordinary consequences of  
24 those convictions and the lack of gain and other factors  
25 similar to those that we've presented to the court. How

1 judges in those cases have seen fit to fashion sentences  
2 like the one we propose today that does not require, as an  
3 element, a term of incarceration.

4 Whatever message needs to be sent in this case has  
5 been sent. And I'm not just talking about the prosecutor's  
6 press release when the conviction took place last February  
7 where they basically sent a strong message was sent simply  
8 by virtue of the convictions, but everything else that has  
9 happened to this man and everything else that will continue  
10 to happen to this man for the rest of his days. Any lawyer,  
11 any rational lawyer, would have to be nuts to do what  
12 happened in this case and to risk suffering the consequences  
13 that Rob Graham has suffered already and will continue to  
14 suffer as a result of this case.

15 And so, your Honor, my plea is this:

16 My plea is to require Rob Graham to serve the  
17 additional harsh sanction and punishment of a prison term is  
18 truly not necessary. And that's the word that your Honor  
19 knows is the bellwether under Section 3553(a) for  
20 determining just punishment.

21 Everyone in this courtroom knows, Judge, that you  
22 can impose such a sentence if you want to. That's obvious.  
23 But you don't have to. And the Supreme Court of the United  
24 States and the Second Circuit Court of Appeals have made  
25 abundantly clear that for reasons similar to the ones we

1 have presented to the court today, your Honor has the  
2 discretion not to impose such a sentence. And so I ask your  
3 Honor, force him to serve his community, if your Honor  
4 thinks such a sanction is appropriate, and have him give  
5 back and help members of society who are truly in need of  
6 his help. Make him a prisoner of his own home, if your  
7 Honor feels that that substantial deprivation of his liberty  
8 is necessary as a further component of his sentence. But I  
9 beseech your Honor to give Mr. Graham the opportunity to  
10 begin now to try to put the pieces of his life back together  
11 and to start anew with what remains of it.

12 I thank your Honor for listening to me this  
13 morning. And with your Honor's permission, I would like to  
14 call a total of four speakers who would like to speak today  
15 on Mr. Graham's behalf.

16 THE COURT: Certainly.

17 MR. VINEGRAD: The first speaker is Donna Lee, two  
18 words, L E E, Williams.

19 THE COURT: You want to come up to the podium.

20 MS. WILLIAMS: Thank you, your Honor.

21 Good morning, your Honor. My name is Donna Lee  
22 Williams and I've been a member of the Delaware Bar since  
23 1984. From 1993 to 2005, I served as Delaware's Insurance  
24 Commissioner, and I've known Rob Graham for well over 20  
25 years.



1 I never in a million years would have expected  
2 that I would have been here this morning to talk to you.  
3 And I hope this morning that I can give you some sense of  
4 how completely out of character this situation is, about how  
5 well Rob is regarded by the insurance industry and by the  
6 regulatory community, and how very much Rob Graham means to  
7 me.

8 I first met Rob in 1987. I joined a firm that Rob  
9 Graham had left, the Bayard firm in Delaware, and began  
10 doing insurance regulatory work and General Re Insurance was  
11 a client of the firm and Rob was my primary contact.

12 I'll never forget the first time that I heard Rob  
13 Graham speak in public. It was March 1988, in Santa Fe, New  
14 Mexico, at a meeting of the regulators, National Association  
15 of Insurance Commissioners meets quarterly. I remember  
16 thinking at the time that this man was like E.F. Hutton.  
17 You member the E.F. Hutton commercials, when E.F. Hutton  
18 talks, people listen. Rob Graham spoke, people listened.

19 I found Rob to be smart, he was eloquent, he was  
20 articulate, self-confident, but very respectful. And one of  
21 the things I noticed most about Rob was that, unlike many  
22 lawyers that I had seen, Rob wasn't the kind of guy who  
23 would just throw everything out there and hope that  
24 something would stick. Rob's arguments were always very  
25 well-reasoned and very well -- very credible.

1 Time went on and I became Insurance Commissioner  
2 and Rob was so well regarded by both me and other regulators  
3 and by the industry itself, that he was part of a small  
4 group of folks that, folks like me, regulators called upon  
5 to actually educate novice regulators about what reinsurance  
6 is all about. We trusted him. I still trust him.

7 I was never more professionally proud of Rob  
8 Graham than I was immediately after the circumstances of  
9 9/11. At that time I was still Delaware Insurance  
10 Commissioner and I was asked by the President of the  
11 National Association of Insurance Commissioners to chair a  
12 committee on terrorism risk. And one of the first things  
13 that I did was to hold a public hearing. Regulators were  
14 very concerned about what was going to happen, were claims  
15 going to be paid, how were we going to deal with this risk  
16 going forward. And Rob was one of the first people to  
17 speak. And he stepped up to the podium and you could hear a  
18 pin drop in that room, because everyone was waiting to hear  
19 what would the industry's response be. And Rob spoke with  
20 great compassion and with focus and with purpose, and he  
21 told me and all of the regulators and all of the people who  
22 were gathered in that room to learn what would happen next,  
23 that even though not a penny in premium had never been  
24 collected, the industry would pay because it was the right  
25 thing to do. And there were lots of things that we had to

1 deal with going forward in order to be able to plan now for  
2 this risk. But that General Re Insurance and Rob Graham, in  
3 particular, would be there every step of the way to help us  
4 to find that solution.

5 So I've told you a little bit about Rob's  
6 reputation in the industry and Rob's reputation with  
7 regulators, it was unparalleled. There's no one that I know  
8 of that is as well-respected by regulators as Rob.

9 Let me tell you a little bit about what Rob Graham  
10 has meant to me personally.

11 I was a very young lawyer when I first met him and  
12 he was my client, but he very quickly became more than a  
13 client. He became a mentor and a very, very dear friend. I  
14 will tell you without question that apart from my husband,  
15 Rob has always been my most trusted friend and advisor. And  
16 I've talked with Rob about some of the most difficult  
17 decisions that I have ever made. I consulted with him in  
18 1992, as a 31 year old lawyer, trying to figure out what I  
19 wanted to do next. There were folks in my party who were  
20 encouraging me to run for Insurance Commissioner. Boy, that  
21 was an awful big risk. I was running against a fellow who  
22 was the President of the State Chamber of Commerce. What  
23 could this little girl from Dover, Delaware bring. But he  
24 had a lot of faith in me and helped me to find a lot of  
25 faith in myself.



1           During the many years that I served as Insurance  
2 Commissioner, I talked with Rob about so many different  
3 things. I talked to him about negotiating through the NEIC  
4 and the various processes that go on. The NEIC sometimes  
5 means no action immediately contemplated. And Rob helped me  
6 to figure out, okay, if that's what you want to do, here are  
7 some of the things you need to do to get that done.

8           I talked to him when the Medicare HMO's all pulled  
9 out of Delaware and there were thousands of angry senior  
10 citizens who no longer had health care. And I talked to him  
11 about how to do a public outreach program, how to help the  
12 people in my community.

13           I talked to Rob when the med mal crisis came  
14 about. We were suddenly struck with a situation of having  
15 no med mal coverage for the only trauma center in the state.

16           I talked with Rob about all sorts of procedural  
17 and regulatory issues that I was facing, questions of first  
18 impression in dealing with possible changes of control or  
19 other transactions involving the state's Blue Cross and Blue  
20 Shield organization, because it was very uniquely organized  
21 under the law.

22           During all this time, your Honor, Rob Graham has  
23 been a very, very trusted advisor and friend. And I want  
24 you to know that not once, not ever, did Rob Graham ever ask  
25 anything of me. He never asked for any favors. He never

1 asked for any special consideration for his company, for  
2 fellow insurance industry representatives who attended NEIC  
3 meetings, or for himself. He never ever asked for anything.

4 This conviction means that the career that he has  
5 known and loved is over. He is crushed, as I am. Being a  
6 lawyer meant everything to him. Your Honor, I hope that you  
7 know that this -- this is a lone transgression. This is a  
8 man who has always comported himself with utmost respect for  
9 process and for integrity and for purpose. And for me and  
10 many, many others, this does not destroy the faith and  
11 confidence that we have in him.

12 Now, I hope that you will give him the opportunity  
13 to do things to continue to serve in some way. Thank you,  
14 your Honor.

15 THE COURT: Thank you.

16 MR. VINEGRAD: Your Honor, the next speaker is  
17 Frank Parisi, P A R I S I.

18 THE COURT: Thank you.

19 MR. PARISI: Good morning.

20 THE COURT: Good morning.

21 MR. PARISI: Your Honor, my name is Frank Parisi.  
22 I'm the director of Strategic Partnerships for the City of  
23 Minneapolis, Minnesota.

24 I've live in Minneapolis and I've known Rob Graham  
25 personally for about 30 years. I appreciate the opportunity

1           you've provided to allow me to tell you about the Rob that I  
2           know.

3                   I met Rob and his wife, Evelyn, when my wife and I  
4           moved next door to them in Wilmington, Delaware. We've been  
5           connected as friends ever since.

6                   Simply stated, Rob has been the kind of person one  
7           can only hope to have as a friend. He's always been steady  
8           and reliable and a positive force in our lives and the lives  
9           of our children virtually since the day we met. Like most  
10          people, our family has experienced its share of challenges.  
11          We've counted Rob among our supporters during the happiest  
12          days, like the births of our children, and during the most  
13          difficult days when we experienced illness, despair, and  
14          loss. During those most difficult times Rob has, without  
15          exception, delivered as one of the rare constants in our  
16          lives. He has always been there when we've needed help or  
17          assistance of any kind. He was a valuable supporter when my  
18          wife was diagnosed with ovarian cancer, and he and his wife  
19          stood with us during the entire nine years of her illness  
20          right up to and through the day she died. But their  
21          involvement during that period was far beyond the scope of a  
22          friend's sympathy. As we encountered milestones, surgeries,  
23          and chemotherapy treatments, for example, Rob would  
24          regularly show up in Minneapolis, even in the dead of  
25          winter. Even if he was only able to come for an hour or two



1 and visit us at the hospital, he would come. As somebody  
2 who frequently traveled in his work, I suspect that the very  
3 last thing he looked forward to doing at the end of a busy  
4 week was the prospect of going back to the airport for one  
5 more time and another flight from New York to Minneapolis  
6 but he came, nonetheless, at his expense, and during his  
7 very limited free time.

8 He was also the kind -- he is also the kind of a  
9 friend that we could rely on for advice and counsel.

10 Some years ago my stepson entered a long and dark  
11 period of drug and alcohol addiction that for a time  
12 absolutely dominated our lives, sometimes even overshadowing  
13 my wife's battle against cancer. We received a great deal  
14 of support and assistance from friends, not the least of  
15 which came from Rob Graham.

16 I submit to your Honor that the true measure of an  
17 individual's character is how and what that person does  
18 during difficult, challenging times. During my family's  
19 darkest days over the last 30 years, Rob Graham has always  
20 been there and always supported us.

21 Over these years, I have never worked with Rob  
22 Graham and I don't pretend to fully understand the details  
23 and intricacies in this case, but what I do know is that Rob  
24 is a good person who has unselfishly supported others in  
25 need over the last 30 years. I hope that kind of admirable

1 behavior over such a long period of time will be considered  
2 and taken into account as you make your determination about  
3 Rob's future.

4 I've heard a poet observe that people may forget  
5 what you've said and they may forget what you do, but  
6 they'll never forget the way you make them feel. I'm here  
7 to tell your Honor that as one person whose encountered Rob  
8 Graham over 30 years, he has always made me and my family  
9 feel supported because he could always be counted on to be  
10 standing right beside us.

11 Thank you.

12 THE COURT: Thank you.

13 MR. VINEGRAD: Your Honor, the next speaker is  
14 Mary Lanning, L A N N I N G.

15 MS. LANNING: Good morning, your Honor.

16 THE COURT: Good morning.

17 MS. LANNING: Thank you for allowing me to speak  
18 today on behalf of my friend Rob Graham. I work in the  
19 financial services sector as a compliance professional and  
20 occasionally as a lobbyist. I'm a principal of my own  
21 company, MLNG Associates. MLNG provides assistance to  
22 insurance businesses and their attorneys in regulated  
23 transactions such as acquisitions and expansions. I met Rob  
24 many years ago in the course of this work. Both of us  
25 contributed regularly to the law-making process in state,

1 national, and international discussions.

2 I also am a nun, with nearly 53 years of helping  
3 people and communities get beyond failures and go forward,  
4 giving their own help to others along the way. In that  
5 capacity, I am president of a not-for-profit corporation  
6 called Yes Solutions, an organization dedicated to helping  
7 women, men, and children who live on the margins, children  
8 of incarcerated parents, immigrant families unable to find  
9 employment, widowed elders, the displaced poor, the sick,  
10 the dying, and those who care for them. These are my  
11 community.

12 Most of them fall between the cracks of public and  
13 private assistance or not yet able to keep their footing on  
14 their own. We support ourselves by our own labors and  
15 generosity of others. We help as many as we can.  
16 Everything we do is accomplished by volunteers, by bringing  
17 people who need relief and encouragement together with those  
18 who once needed it themselves and are willing to give it.

19 I have one purpose, your Honor, and one only for  
20 asking you to hear me today. My people need the kind of  
21 dedicated time and professional know-how that Rob Graham  
22 could bring to us on a consistent basis for a period of  
23 time. I ask your Honor to consider what it would mean to a  
24 small community like Yes Solutions to be the place where Rob  
25 Graham might provide a concentrated period of community



1 service, where everyday of his sentence could directly help  
2 someone else to leave a broken past behind, to learn new  
3 skills, and to build a few life. Let Rob work with us  
4 one-on-one in teaching work habits and language usage and  
5 personal financial management to men whose lives until now  
6 have not managed to put these pieces together in any  
7 functional way. Let him work side by side with these men to  
8 give them work experience that can open the door to paying  
9 jobs for them. Let him help them get those jobs. Let Rob  
10 teach them how to build the shelves that are needed in our  
11 childrens classrooms and playrooms at Abraham House which is  
12 our center for families whose lives have been affected by  
13 the criminal justice system. Let him teach these men, many  
14 of whom have never been employed, how to use hand tools to  
15 measure and count, to add and divide, to trust their eyes  
16 and their judgment, and to care about the end product. Let  
17 him spend extra time with some of them to teach them a  
18 technical vocabulary and business concepts, writing skills,  
19 things that would translate into vastly different job  
20 opportunities than are on their horizons now. Let Rob spend  
21 time with a dozen of our teenage boys this year who are only  
22 beginning to think that a college education is a real  
23 possibility. Let him supervise and train our teenage summer  
24 interns in their community service as they learn to  
25 recognize the needs of elders and diabled people around

1       them, and to make their own choices to move obstacles and  
2       make a kinder world.

3               Rob Graham was respected for good reason, your  
4       Honor. The core of his reputation was his integrity and his  
5       fairness, but he was just as well regarded for his work and  
6       his leadership, and certainly for his written and oral  
7       presentation skills. He was always a generous team worker.  
8       I am privileged to have worked with him on national advisory  
9       committees and task forces and to have shared the tiring  
10      tasks of teaching and leading.

11             I know from personal professional experience what  
12      it could mean to have Rob Graham on the Yes Solutions team.  
13      In a nutshell, Rob would attract more financial support and  
14      resources to Yes Solutions. We provide hot home cooked  
15      meals to almost 10,000 homeless people each year, on the  
16      sidewalk, on the three lonely holidays, Thanksgiving,  
17      Christmas and Valentine's. Rob has been there with us. We  
18      provide essential school supplies, back packs, shoes,  
19      sneakers, warm coats, books, to almost five hundred children  
20      each fall. All of this is paid for out of our own earnings  
21      and what donations we can encourage others to give us. We  
22      help support dozen of children in alternative residential  
23      facilities and college prep programs. We provide respite  
24      care for dozens of elders and end of life care to many more.

25             I truly believe that Rob Graham could lead more of

1           our industry colleagues to give some of their time and  
2           resources to these services that touch so many lives.  
3           Please consider letting him help me recruit and develop new  
4           volunteers and new donors who will discover for themselves  
5           how very far one person's moments of kindness can carry  
6           someone else.

7                       Last year I sat in your Honor's courtroom for all  
8           but the first few days of this trial. I was moved deeply by  
9           the dignity, the poise, and the equanimity with which Rob  
10          carried himself as the trial proceeded. He was everything I  
11          expected him to be. Dozens of his peers, our friends and  
12          colleagues, made the journey to Hartford from all around the  
13          United States on a self-initiated rotation to show him our  
14          support. We all went home strengthened by his strength. He  
15          still is held in the highest esteem by regulators and their  
16          technical staff, by lawyers and public officials with whom I  
17          work every day, who write to each other and to me every week  
18          to inquire whether there's anything we might be doing to  
19          help him. If Rob were working with Yes Solutions, I am  
20          confident that many more of our colleagues and mutual  
21          friends would rally around to help make anything he touches  
22          a success.

23                      Your Honor, Yes Solutions has worked with the  
24          courts in New York and New Jersey before in providing  
25          alternative sentences. We would seize the opportunity to



1 work with someone of Rob's caliber and competence.

2 Judge Droney, your judgment call on Rob's sentence  
3 could change not only Rob's life, it could affect the lives  
4 of hundreds of others now and for at least another  
5 generation. You could open possibilities in my community  
6 that are nowhere in reach today. You could bring real  
7 beneficiaries into the balance. Please consider giving the  
8 Yes Solutions community this opportunity at a time when the  
9 economic pressures on us are incrementally greater than on  
10 many other segments of society.

11 Thank you for hearing me, your Honor.

12 THE COURT: Thank you for coming.

13 MR. VINEGRAD: The next speaker is Evelyn, E V E L  
14 Y N, Graham.

15 MRS. GRAHAM: I am Evelyn Graham, and I thank you  
16 for the opportunity to speak to you about my husband, Rob  
17 Graham.

18 This man who appears before you today is the man I  
19 have chosen to share my life with for 37 years. I not only  
20 love Rob with all my heart, I deeply respect and admire him.

21 Rob and I met in college. It was the late '60's.  
22 Like many idealistic students of the time, we were going to  
23 change the world. And, clearly, we didn't do that, but Rob  
24 did change the lives of many people he met over the years  
25 for the better.

1           From the moment I met Rob, I felt his commitment  
2           and passion, and I witnessed his integrity and leadership.  
3           I watched with pride as he served as President of the  
4           Student Government Association, demonstrating remarkable  
5           skill in walking a tight rope between students and faculty  
6           during the 60's, a time of considerable unrest. Rob's duty  
7           was to his fellow students, but he knew he could only serve  
8           them by doing what was right. He owed his success, in no  
9           small measure, to the tremendous respect that he earned, not  
10          just from the students, but from the faculty and the  
11          administration. Like me, your Honor, they admired Rob's  
12          honesty, his integrity, and his willingness to speak his  
13          mind.

14          As it turns out, these qualities were and are the  
15          essence of Rob's life, whether taking a stand against the  
16          Attorney General of Delaware for the unfair treatment of his  
17          staff, or helping to revitalize our inner city Delaware  
18          community, or serving as an elected official to protect and  
19          promote our small Connecticut town, or fighting on behalf of  
20          the industry he loves to this day, Rob approached each of  
21          these responsibilities with honesty and integrity, never  
22          setting aside his principles to serve his own needs. To the  
23          contrary, Rob has always put the needs of others ahead of  
24          his own, volunteering to spend late nights working at Meals  
25          on Wheels, hosting a fundraiser to help a friend with

1           Parkinson's disease, being by a friend's side after a  
2           devastating car accident, giving guidance to a young college  
3           graduate that he'd never met, or going out of his way to  
4           make sure that his mother wasn't alone on holidays. Rob  
5           always looked out for others first and foremost.

6                     Your Honor, even when it wasn't easy or popular, I  
7           know that Rob committed to doing the right thing.  
8           Obviously, I'm not privy to everything that transpired  
9           between Rob and his clients, but over the years I saw and  
10          heard enough to make it clear to me that Rob didn't win many  
11          popularity contests at his company because of his insistence  
12          that rules and principles had to be followed regardless of  
13          the economic consequences. I can't imagine Rob being any  
14          other way. He's a man whose worked hard his whole life,  
15          never seeking glory or personal acclaim.

16                    For the past 37 years, Rob and I have stood  
17          together. We've lived together, laughed together, cried  
18          together, fought together, and endured together. Through  
19          the good times and bad, I have always wanted this man by my  
20          side. Of course, I can't claim our marriage is perfect.  
21          Truth be told, these past few years have been the toughest  
22          of our lives. Ironically, though, they've proven to be some  
23          of the most meaningful. Through all of the uncertainty and  
24          soul searching, I've gotten to see the true character of  
25          this man. I've watched with admiration as he's carried



1           himself with strength and dignity through these devastating  
2           events.

3                   I remember the day, October 26, 2005, Rob met with  
4           his lawyer and learned that the Government intended to  
5           charge him with a crime. He was devastated. He cried. And  
6           quickly seemed to shrink before my eyes. But, your Honor,  
7           just as quickly, I saw him put aside his own pain to comfort  
8           and to protect me. Despite all that swirls around him, Rob  
9           continues to put my needs and those of his friends and  
10          family before his own, and he never blames others for his  
11          current predicament. Rob certainly has his faults,  
12          but I know now more than ever, that the core of this man,  
13          the fundamental traits that I fell in love with and still  
14          love to this day remain strong. But I also know that  
15          despite his stoicism, Rob suffers tremendously.

16                   Your Honor, while Rob is devoted to family and  
17          friends, he was passionate about being a lawyer. Even  
18          before I met him, Rob knew what he wanted to do, and for 35  
19          years he lived and loved being a lawyer. For 35 years he  
20          worked hard to build an impeccable reputation for serving  
21          his clients with honesty and integrity. For Rob being a  
22          lawyer wasn't just a job, it defined him as much as any job  
23          can define a person. Rob knows those days are gone forever.  
24          He's not only lost his career, but his reputation is  
25          shattered. No matter how many people come forward to remind

1 Rob of the man they know him to be, no matter how many  
2 friends and colleagues stood by his side during the trial,  
3 no matter how much I remind him of all of the good that he's  
4 done and accomplished, all Rob sees is his role in the  
5 events that bring him here today. Every day, for the three  
6 and a half years of this ordeal, Rob has relived his role in  
7 this one transaction. He will never stop thinking about it  
8 and nothing will ever make his anguish, torment, and regret  
9 go away. Those feelings haunt Rob from morning till night,  
10 and they will continue to do so for the rest of his life.

11 Your Honor, in sentencing my husband, I beg you to  
12 take the full measure of this man, the many good deeds he's  
13 done, his service to his friends, family and community, and  
14 the devastation he suffered and will continue to suffer for  
15 the rest of his life.

16 Your Honor, I beg for mercy and compassion.

17 Thank you.

18 THE COURT: Thank you.

19 Mr. Vinegrad, does Mr. Graham care to address the  
20 Court?

21 MR. VINEGRAD: Yes, he does.

22 THE DEFENDANT: Your Honor, over the last four  
23 years I've been sustained by the tremendous love and support  
24 that I've received from family and from friends. In  
25 addition to those who have already spoken, some of those

1 friends are in the courtroom today. I'm grateful for their  
2 support, but I'm also very embarrassed and ashamed that the  
3 reason they're here is because I stand before you to be  
4 sentenced after conviction of some very serious crimes.

5 I'm old-fashioned. Concepts like honor and shame,  
6 service and duty, integrity and truth, are important to me.  
7 I've always tried to help people and to do the right thing  
8 in all of my dealings, personal and professional. The  
9 jury's verdict says that I've failed that standard  
10 profoundly, and I've suffered severe consequences as a  
11 result of that profound failure.

12 From a very young age, I always wanted to be a  
13 lawyer. I was privileged to become one, and for more than  
14 30 years to work for and with some very good lawyers in a  
15 variety of settings, in government, in private practice, and  
16 in-house at a reinsurance company. In a very real sense, I  
17 always defined myself by the way I practiced my profession  
18 and the way I did my job as a lawyer. Over time I developed  
19 a good reputation in the legal profession and in the  
20 insurance and reinsurance business. Being known as an  
21 honest and reputable lawyer meant everything to me. It gave  
22 me peace of mind to know that I had the respect of my  
23 colleagues and clients, and a reputation among them for  
24 always doing the right thing. That's all gone now.

25 Instead of my career and reputation as a lawyer



1 serving as a good example to others, as a disgraced and  
2 disbarred lawyer they will serve only as a cautionary tale.  
3 I'll never been able to practice the profession I love  
4 again, I'll never be able to work in the insurance and  
5 reinsurance business again.

6 As for peace of mind, for the past four years  
7 there hasn't been a waking hour of any day that I haven't  
8 thought about the AIG transaction and my role in it and what  
9 I could or should have done differently. I suspect that  
10 will be true for the rest of my life.

11 I realize there are no do-overs in life. Nothing  
12 I can say or do now would change what has happened or its  
13 impact on the lives of others or on me. Your Honor, I  
14 regret that more than words can adequately express.

15 Thank you.

16 THE COURT: Thank you, Mr. Graham.

17 Anything else you had, Mr. Vinegrad?

18 MR. VINEGRAD: No, your Honor.

19 THE COURT: We'll take a short recess at this  
20 time.

21 (Recess.)  
22  
23  
24  
25

1 THE COURT: We are now ready to turn to the  
2 imposition of the sentence.

3 Before we begin, I'd like to state the factors  
4 that a District Court must take into consideration in  
5 determining a particular sentence to be imposed under the  
6 federal sentencing statute, which is 18 U.S. Code Section  
7 3553(a).

8 And those factors are:

9 The nature and circumstances of the offense and  
10 the history and characteristics of the defendant;

11 The need for the sentence imposed to serve the  
12 various purposes of a criminal sentence, which I'll review  
13 in a moment;

14 The kinds of sentences available;

15 The kinds of sentence and the sentencing range  
16 established for the applicable category of offense committed  
17 by the applicable category of defendant as set forth by the  
18 Sentencing Guidelines I'm to consider today, as well as any  
19 pertinent policy statement in those guidelines; and

20 The need to avoid unwarranted sentence disparities  
21 among defendants with similar records who have been found  
22 guilty of similar contact; and

23 Lastly, the need to provide restitution to any  
24 victims.

25 Also, I must consider the U.S. Sentencing

1 Guidelines and their policy statements in determining  
2 Mr. Graham's sentence. However, I'm not bound by those  
3 guidelines. In other words, I may give him a sentence  
4 within a guidelines range or outside of that range. I'm  
5 also mindful of the guidance the U.S. Court of Appeals has  
6 given the District Courts in United States v. Cavera  
7 concerning our consideration of the U.S. Sentencing  
8 Guidelines as well as the factors under 18 U.S. Code Section  
9 3553(a).

10 I must also take into account the following  
11 factors in arriving at the sentence for Mr. Graham. In  
12 determining whether to impose a fine, and the amount of the  
13 fine and how it would be paid, that is, as a lump sum or in  
14 installments, as part of this particular sentence, I must  
15 consider the factors set forth at 18 U.S. Code Sections  
16 3553(a) and 3572. In determining whether to impose a term  
17 of probation, its length and its particular conditions, I  
18 must consider the factors set forth at 18 U.S. Code Section  
19 3562 and 3553(a). In determining whether to impose  
20 restitution and how it would be paid as part of a particular  
21 sentence, I must consider the factors set forth at three  
22 statutes, 18 U.S. Code Section 3663, 3663A and 3664. And in  
23 determining whether to impose a term of supervised release  
24 following any period of incarceration, including its  
25 particular length and its particular conditions, I must



1 consider the factors set forth at 18 U.S. Code Sections  
2 3553(a) and 3583.

3 And while I have taken into account all those  
4 factors, I'll explain more particularly how I've reached a  
5 decision as to the appropriate sentence for Mr. Graham.

6 First of all, I have reviewed the the Presentence  
7 Report and its addenda prepared by the Probation Office.

8 I've considered counsel's memos, their remarks,  
9 the letters that I have received, the defendants remarks,  
10 and the other peoples remarks that I heard in this hearing  
11 today.

12 I've also taken into account the need for this  
13 sentence to serve the various purposes of a criminal  
14 sanction. Under 18 U.S. Code Section 3553, I am required to  
15 impose a sentence sufficient, but not greater than  
16 necessary, to comply with the purposes of sentencing for  
17 which I will review now. First and foremost among those  
18 purposes is to provide just punishment. Part of the meaning  
19 of a just punishment is that it not be unduly different from  
20 sentences received by defendants with similar records who  
21 have been convicted of similar conduct. A criminal sentence  
22 also could protect the public by immobilizing an offender  
23 and isolating him from society, thus, absolutely protecting  
24 society during the period of incarceration. Another  
25 function of a sentence is specific deterrence. Namely, to

1 make sure that Mr. Graham will not again commit a crime  
2 after he completes his sentence here. Another purpose is  
3 general deterrence. And that is to promote respect for the  
4 law and to warn others who might be tempted to act as Mr.  
5 Graham did, that the community, represented by the law  
6 enforcement authorities and by the courts, treats these  
7 offenses seriously and will punish others who behave as he  
8 did. And finally, I have thought about the goal of  
9 rehabilitation for Mr. Graham as well.

10 Now, as to departures from the guidelines, I  
11 recognize that I have the authority to depart downward  
12 because of Mr. Graham's personal history and  
13 characteristics. I've chosen, however, to address these  
14 characteristics in the context of a non-guidelines sentence.

15 I also have the authority to depart on the basis  
16 that the offense level substantially overstates the  
17 seriousness of the offense. Again, I have, however, chosen  
18 to address this in the context of a non-guidelines sentence.

19 As to the request concerning the cumulative  
20 affects of substantially overlapping enhancements, the  
21 Second Circuit in United States v. Lauersen held that  
22 district courts may depart when substantially overlapping  
23 enhancements result in a significant increase in the  
24 sentencing range to an extent not adequately considered by  
25 the Sentencing Commission. There is no basis for a

1 departure on those grounds in this case. The Commission  
2 certainly contemplated the combination of levels for loss,  
3 in this case 30, and the 6 level enhancement for more than  
4 250 victims. The combination of the base offense level with  
5 those two factors alone results in an offense level of 43  
6 and a guideline sentence of life imprisonment. The addition  
7 of two levels for sophisticated means and two levels for use  
8 of a special skill have no effect on Mr. Graham's guideline  
9 sentence range. Of course, I still will consider this  
10 argument in the context of considering and applying the  
11 factors under 18 U.S. Code Section 3553(a).

12 Now, as to aberrant behavior, Section 5K2.20 of  
13 the Sentencing Guidelines gives the court the discretion to  
14 depart in an extraordinary case where the defendant's  
15 criminal conduct constituted aberrant behavior. The Court  
16 may exercise this discretion to depart for aberrant behavior  
17 only where the offense is a single criminal occurrence or  
18 single criminal transaction that (A) was committed without  
19 significant planning; (B) was of limited duration; and (C)  
20 represents a marked deviation by the defendant from an  
21 otherwise law-abiding life.

22 Mr. Graham argues that he spent only a few hours  
23 on the LPT, and merely filled in a boilerplate contract and  
24 reviewed a letter drafted by others. In reality, however,  
25 Mr. Graham worked on several stages of the LPT deal over a



1 period of at least six months. His behavior was not  
2 aberrant, and therefore this departure is inapplicable.

3 Of course, the Court will consider this  
4 information in the context of a non-guidelines sentence,  
5 though.

6 As to his claim that he was not motivated by  
7 personal gain, the Court has chosen to address this argument  
8 in the context of a non-guidelines sentence.

9 As to the argument concerning collateral  
10 consequences, the Court finds that a departure is not  
11 warranted because of the potential collateral consequences  
12 of Mr. Graham's loss of his law license and the significant  
13 financial and other regulatory penalties he may face, as  
14 well as the other personal consequences. Of course, the  
15 Court will consider this information also in the context of  
16 a non-guidelines sentence.

17 As to the argument the Sixth Amendment requires a  
18 jury determination as to the amount of loss and the number  
19 of victims, I do not read Booker or Rita to require under  
20 the Sixth Amendment a jury determination as to the amount of  
21 loss or the number of victims.

22 Although I recognize that I have the authority to  
23 depart on other bases not identified by counsel, I choose  
24 not to do so as the facts do not warrant it here.

25 However, after considering the application of the

1 United States Sentencing Guidelines as well as the factors  
2 set forth in 18 U.S. Code Section 3553(a), I have decided to  
3 give Mr. Graham a non-guidelines sentence.

4 An important factor here that is different from so  
5 many other corporate fraud prosecutions is that Mr. Graham  
6 did not personally gain in a direct way from his criminal  
7 conduct, and his motivation was not one of obtaining direct  
8 personal gain. Mr. Graham's lack of direct personal gain  
9 and his motivation for this criminal enterprise certainly  
10 does not excuse his conduct and perhaps does not warrant a  
11 departure from the offense level under the Sentencing  
12 Guidelines. But, surely, it is relevant under the federal  
13 sentencing statute.

14 There was substantial loss caused to AIG  
15 stockholders here, over 500 million dollars. And Mr. Graham  
16 was aware of how harmful his conduct could be to the  
17 integrity of the market. His intent, though, was different  
18 from the typical fraud defendant, which is to make money  
19 personally and directly from the illegal conduct. Mr.  
20 Graham's intent satisfied the criminal offenses here. He  
21 knew that the 500 million dollar loss portfolio deal was  
22 important to AIG as well as to Gen Re and, if discovered,  
23 would have a substantial negative effect on AIG as well as  
24 Gen Re. He also had a substantial role in creating the  
25 phony documents supporting the LPT. But, there is a

1 difference in the conduct here and Mr. Graham's motivation  
2 should be relevant under the federal sentencing statute.

3 The Court is also mindful of the Second Circuit's  
4 recent guidance in United States v. Cutler, which held that  
5 District Courts should not conflate an evaluation of the  
6 defendant's role in the defense with an evaluation of  
7 whether the amount of loss substantially overstates the  
8 seriousness of the offense when the actual gain by the  
9 defendant was minimal in relation to the loss. Surely, Mr.  
10 Graham played an important role in the fraud here. However,  
11 unlike Cutler, Robert Graham's motive here was not direct,  
12 immediate personal gain, and he did not directly gain from  
13 the fraud in an immediate fashion. As the Second Circuit  
14 more recently acknowledged in the U.S. v. Cavera case, even  
15 when an offense caused a large financial impact, there still  
16 may be a wide variety of culpability amongst defendants that  
17 counsels different sentences based on the factors identified  
18 in 3553(a).

19 Mr. Graham's participation in this fraud was  
20 important to its success, however. He served as the only  
21 lawyer creating and reviewing the legal documents which  
22 would be examined by auditors of Gen Re and AIG. He  
23 approved the fake offer letter which made it look like Gen  
24 Re proposed the transaction to AIG. He suggested the method  
25 of structuring the transaction to help conceal it, and he



1 drafted the actual sham contracts. Mr. Graham knew no  
2 outside counsel would review his work, and agreed with his  
3 co-conspirators to limit the number of people involved in  
4 the LPT so as to keep its fraudulent nature hidden. He knew  
5 full well that AIG, a public company, would misrepresent the  
6 fraudulent nature of the LPT, and his legal work was  
7 important to that concealment. He didn't want others to  
8 connect the dots here, knew that regulators would attack the  
9 deal if they found out about its true nature, knew there was  
10 no real risk transfer, knew that AIG had issues with  
11 regulators reviewing the LPT, and told his general counsel  
12 at Gen Re that how AIG books the LPT is between them, their  
13 accountants, and God. This was hardly the kind of conduct  
14 or ethics a lawyer should follow.

15 Like with the other defendants in this case,  
16 though, this is also a sad day and a tragedy for Mr. Graham.  
17 By all accounts, he had a strong reputation as an honest,  
18 ethical lawyer. So many of his colleagues, both at the bar  
19 and in business, spoke and wrote of his integrity and  
20 fairness, his counseling of junior lawyers and executives,  
21 and at times he would stand up for what is right. He also  
22 has already suffered a great deal, not only in his  
23 reputation among his family and friends, but also because of  
24 the end of what otherwise was a fine legal career and the  
25 loss of a hard earned profession.

1           Mr. Graham also has a fine record of service to  
2 his community, serving, by all accounts, as a distinguished  
3 member of the Westport Planning and Zoning Commission and  
4 its Board of Finance. He has devoted considerable time to  
5 the Delaware Avenue Commission Association, Meals on Wheels,  
6 and as a teacher of reinsurance law to professional and  
7 business associations. Mr. Graham has also been a good,  
8 loyal and helpful friend and neighbor to so many. I have  
9 received numerous letters detailing his help to others in  
10 need without looking for any public recognition.

11           In addition, although I have concluded that Mr.  
12 Graham does not merit a role adjustment here, his  
13 participation in the LPT was not as deep as some others. He  
14 was important to its success, but in comparing him to some  
15 of its other participants, he did not have as active and as  
16 central a role.

17           Some of the other factors in the federal  
18 sentencing statute also support a non-guidelines sentence,  
19 including the goal of specific deterrence. The sentence of  
20 life imprisonment or any sentence near that is far too great  
21 for that purpose. There's no question that general  
22 deterrence is also an important consideration for this  
23 sentence, but the sentence called for by the Guidelines is  
24 excessive for that purpose as well. A message must be sent  
25 to the business community, including those lawyers who

1 counsel that community, that this kind of conduct will not  
2 be tolerated and will be punished severely, but the  
3 Guidelines sentence called for here is too severe to address  
4 that goal. I believe the sentence I will impose today  
5 satisfies those elements of specific and general deterrence  
6 as it constitutes a significant deprivation of freedom for  
7 Mr. Graham and sends the appropriate message to those  
8 similarly situated to him.

9 It must also be stated that Mr. Graham is not  
10 responsible for the difficulties AIG has faced within the  
11 last year or so. It would be unfair to hold him accountable  
12 for all the recent bad news about AIG. This criminal  
13 conduct was much before those events, but we expect and  
14 require much more from our business leaders, and Mr. Graham  
15 fell far short of discharging his responsibilities to the  
16 investing public.

17 In arriving at a particular sentence here, the  
18 Court has consulted many similar cases for guidance. In  
19 many ways, though, this case is different. Such sentencings  
20 in cases like Enron, Adelphia, Worldcom, Cendant, Adelson,  
21 Parris, including the cases referred to in Parris, Bennett,  
22 Surgent, Earls, Olis, Cushing, Grabske, Reyes, Salinger and  
23 Argo provide some points of reference for arriving at a  
24 sentence that satisfies the federal sentencing statute.  
25 However, there are distinguishing characteristics, as I have



1 mentioned. I have arrived at a particular sentence in  
2 consideration of all that, but I've also given due  
3 consideration to particular aspects of this case, Mr.  
4 Graham's participation in it, and the individualized  
5 application of factors under the federal sentencing  
6 statute.

7 The Supreme Court in Gall v. United States  
8 instructed District Courts that they must give sufficient  
9 justification for a major departure from suggested  
10 guidelines sentencing ranges. I will impose a sentence  
11 which is such a significant deviation from the range here,  
12 but the Court has consulted all the decisions mentioned  
13 previously and, in applying the factors of 18 U.S. Code  
14 Section 3553(a), arrived at the sentence I will now impose.

15 Mr. Graham, would you please stand at this time.

16 Mr. Graham, I hereby sentence you to the  
17 following:

18 As to incarceration, to the custody of the United  
19 States Bureau of Prisons for a period of 12 months and one  
20 day on each count of conviction, all sentences of  
21 incarceration to be concurrent.

22 I'm also sentencing you to a term of supervised  
23 release of two years on each count of conviction, also to be  
24 concurrent.

25 As conditions of supervised release, I order the

1 following:

2 The mandatory conditions at Guideline Section  
3 5D1.3(a)(1), (2), (5), (6) and (8);

4 The standard conditions of supervised release set  
5 forth in the Policy Statement at Guideline Section 5D1.3(c),  
6 except for condition (13); and

7 The special condition of supervised release which  
8 prohibits you from possessing a firearm or other dangerous  
9 weapon.

10 If you violate any of these conditions during your  
11 period of supervised release, the court will be free to  
12 sentence you to additional time in prison of as much as two  
13 years.

14 As to a fine, I'm imposing a fine of \$100,000.

15 The court hereby directs that the Probation Office  
16 provide Mr. Graham with a written statement that sets forth  
17 all of the conditions of his supervised release. And that  
18 statement should be sufficiently clear and specific so that  
19 it may serve as a guide for his conduct.

20 As to forfeiture, the Court ordered a final order  
21 of forfeiture as to all the defendants on December 31, 2008.

22 Mr. Graham shall pay the mandatory special  
23 assessment of \$1600 which is due and payable immediately for  
24 his counts of conviction.

25 And is there a request for a recommendation to the

THE COURT: How has he done during the course of



1 his presentence release, Mr. Topor?

2 MR. TOPER: There has been no issues, your  
3 Honor.

4 THE COURT: How does the Government feel about  
5 that?

6 MR. PATRICCO: No objection, your Honor.

7 THE COURT: I hereby find that release pending the  
8 execution of the sentence is appropriate in this case  
9 pursuant to 18 U.S. Code Section 3143(a).

10 Accordingly, the application for voluntary  
11 surrender is granted.

12 Mr. Graham, I hereby order that on June 3, 2009,  
13 you are to surrender yourself to the federal correctional  
14 facility designated by the United States Bureau of Prisons  
15 or as such other place as the United States Marshal Service  
16 may direct. If you fail to surrender for service of your  
17 sentence, you face an additional ten year term of  
18 imprisonment to be served consecutively to the sentence I've  
19 just ordered or an additional fine or both sanctions. Do  
20 you understand that too?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Is there a request for release pending  
23 appeal?

24 MR. VINEGRAD: Yes, there is. My understanding,  
25 based on prior discussions, is the Government does not

1 object.

2 THE COURT: Is that correct?

3 MR. PATRICCO: That's correct, your Honor. We do  
4 not object.

5 THE COURT: I'll grant that request as well.

6 I also order that a corrected of the PSR be  
7 provided to the U.S. Bureau of Prisons and the U.S.  
8 Sentencing Commission, that other copies of the PSR remain  
9 confidential, and that if an appeal is taken, counsel be  
10 permitted access to the PSR. Under Local Rule 32(j), a copy  
11 of the PSR also shall be made part of the court record, but  
12 shall be placed under seal. If a notice of appeal is not  
13 filed, the Clerk's Office shall return the report to the  
14 Probation Office.

15 Is there anything else to take up concerning Mr.  
16 Graham today, Mr. Patricco?

17 MR. PATRICCO: No, your Honor.

18 THE COURT: Or Mr. Vinegrad?

19 MR. VINEGRAD: No, your Honor.

20 THE COURT: We'll be in recess.

21 (Recess.)  
22  
23  
24  
25

C E R T I F I C A T E

I, Martha C. Marshall, RMR, CRR, hereby certify that the foregoing pages are a complete and accurate transcription of my original stenotype notes taken in the matter of UNITED STATES V. ROBERT GRAHAM, which was held before the Honorable Christopher F. Droney, U.S.D.J, at 450 Main Street, Hartford, Connecticut, on April 30, 2009.

/s/\_\_\_\_\_  
Martha C. Marshall, RMR, CRR  
Official Court Reporter